

CERTIFICATE OF SERVICE
I certify that I mailed
copies of Petition with
Supplement #1 w/ DVD
to Raven Horowitz
on 8/21/11
Date Signed Rami
via email
and USPS
(includes
copy of DVD)

FILED
COURT OF APPEALS
DIVISION II

11 AUG 29 PM 4:15

STATE OF WASHINGTON
BY [Signature]
DEPUTY

WASHINGTON STATE COURT OF APPEALS
DIVISION TWO

MARGARET ELAINE BELKNAP,

Petitioner,

vs.

STATE OF WASHINGTON,

Respondent.

Cause No. 42005-8-11

MOTION TO SUPPLEMENT
PERSONAL RESTRAINT
PETITION

Comes now Margaret Elaine Belknap, by and through her attorney, Jennifer Kaplan, and
moves to for entry of an order as follows:

I. RELIEF REQUESTED

Petitioner requests leave to supplement Ms. Belknap's Personal Restraint Petition with:

1. The enhanced video of the incident between Ms. Belknap and Officer Gassett at issue
in the PRP and declarations from the enhancement specialist and Petitioner; and

2. A declaration from an expert in criminal defense about the standard of practice in
investigating criminal cases.

II. REASONS FOR SUPPLEMENTATION

1. The Video

1 verifying that the video does depict the events of the night that she was arrested, for the sake of
2 authenticity.

3 2. The Expert Declaration

4 When Petitioner's CrR 7.8 Motion was transferred to this Court, Petitioner's counsel had
5 believed that Petitioner would be the party to write an opening brief, and that the State would
6 therefore respond. Petitioner would have included an expert declaration in the opening brief had
7 that been the case. After the briefing schedule was ordered, Petitioner realized that this was not
8 the case. Petitioner believes that this Court would benefit from hearing the opinion of an expert
9 about the standard of practice in investigations and that the declaration should properly be before
10 the record.

11 III. CONCLUSION

12 The relief requested herein should be granted.

13 DATED this 29th day of August, 2011

14 Respectfully submitted,

15 /s/ Jennifer Kaplan

16 Jennifer Kaplan, W.S.B.A. #40937
17 Counsel for Margaret Belknap

WASHINGTON STATE COURT OF APPEALS
DIVISION TWO

MARGARET ELAINE BELKNAP,

Petitioner,

vs.

STATE OF WASHINGTON,

Respondent.

Cause No. 42005-8-11

AFFIDAVIT OF MARGARET
ELAINE BELKNAP

Margaret Elaine Belknap declares and certifies as follows:

1. I am the petitioner in the above-captioned matter. I am competent to be a witness and have personal knowledge of the facts set forth herein.

2. On April 8, 2010, I attended a demonstration against police brutality in Olympia, Washington. I was taken into custody by the Olympia Police Department as part of a mass arrest of all demonstration participants. I was charged with two counts of Assault in the Third Degree after the mass arrest.

3. I have viewed the enhanced video produced by Thomas Sandor. The video accurately depicts the events of April 8, 2010 as I recall them.

I hereby declare under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

Dated this 18 day of August 2011, in St. Cloud, Florida.

/s/ Margaret Elaine Belknap
Margaret Elaine Belknap

DECLARATION OF THOMAS R. SANDOR

I, Thomas R. Sandor, declare as follows:

Qualifications

1. I am a forensic media specialist. I have nearly twenty years of experience in forensic media analysis, research and consulting. I have extensive experience in media enhancement technology for law enforcement, criminal and civil court cases. Because of my advanced electronic engineering degree and work experience I am qualified in computer and surveillance systems design. I have done work for prosecutors, police department, plaintiff's attorneys, defense attorneys, corporate security, the U.S. Postal Inspector and the Immigration and Customs Enforcement of US Department of Homeland Security. I have been recognized as a forensic media and computer science expert by various State and Federal Courts.
2. I have a doctoral degree in electrical engineering from the Politecnico di Milano in Milan, Italy. I have post-graduate studies in electronics, computer science, commercial law and communications at the Illinois Institute of Technology, the University of Iowa, San Francisco State College and the University of Washington. I participate in seminars and continuing education in video and audio technology, and related areas, including forensic media workshops held by the American Academy of Forensic Sciences.

3. Attached and incorporated by reference are a copy of my abbreviated curriculum vitae (CV) and a partial list of recent forensic media projects I have done. I am specialized in computer aided facial detail comparison and known for the development of the Cranial Relative Comparative Measurement (CRCM) technology.

Work Requested

4. I was retained by Margaret Belknap's attorney, Jennifer Kaplan, in the above-captioned case. Counsel provided a video and identified a section relevant to the case. My task was to improve the visibility of the action in that section of the video and to perform slow-motion processing for better observation of the activity and individuals involved.
5. The materials supplied to me consisted one DVD disc containing a video clip of approximately 55 minutes.
6. I performed work on this case as follows:
7. The entire video clip was converted into DV AVI format for processing.
8. The requested section was selected and separated from the full clip.
9. The selection was enhanced for brightness and contrast improving the visibility of details.
10. The selection was processed approximately 20% slow motion.

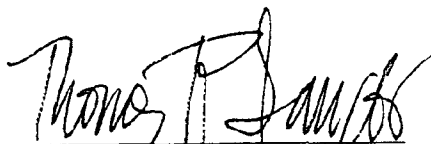
11. The slow motion clip was transcoded into DVD MPEG2 format and a DVD disc was burned. This disc was sent to the Client for approval.
12. Client requested somewhat longer selection, which was prepared following the above procedure.
13. A DVD conversion was prepared containing a. the new selection at its original length and b. the slow motion conversion. Length of the new selection in the original video is 1 minute, 1 second. The slow motion processing at 17% resulted in the enhanced and slowed clip at 5 minute, 50 seconds and 19 frames.
14. A menu structure was authored for the new DVD and copies were burned.
15. The work that I performed did not in any way alter the actions that were depicted therein.

This report was prepared by:

Thomas R. Sandor

Date: August 23, 2011

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT TO THE BEST OF MY INFORMATION AND BELIEF.


Thomas R. Sandor

8/24/2011 RENTON, WA
Date and Place

Curriculum Vitae of Thomas R. Sandor

trsandor@aol.com

600 SW 13th Street, Renton WA 98057

425-277-6720

October 2010.

Education:

University of Budapest - School of Engineering
Budapest, Hungary, 1953-1956.

Politecnico di Milano - Milan, Italy – 1956-1959

Degree: Dr. Ing. Electrical Engineering, (similar to PhD E.E.)

Continuing Education:

Illinois Institute of Technology - Electronic Engineering – Post graduate course.

University of Iowa - 2-year post-graduate course in communication and business law.

San Francisco State College - course in Semantics and Psychology of Communication.

University of Washington - Graphic design and art courses

Center for Creative Leadership, Greensboro, NC: Simulated training technology program - Graduate, 1989

American Academy of Forensic Sciences: Forensic Multimedia Workshop, 2010

Seminars and Continuing Education in video and audio technology, applied computer technology, interactive and simulated training technology, creative and technical writing, effective communication, commercial law, advertising and graphic arts design.

Professional Experience – Forensic Media Technology

Over 16 years of experience as a consultant in the fields of forensic multimedia and computer science to the legal profession, insurance companies, corporate security, investigators and individuals.

Developer of Cranial Relative Comparative Measurement (CRCM) technology, a Computer Aided Facial Detail Comparison process, using cranial anatomical hard tissue landmark reference points and custom designed spread sheet modeling to convert facial features to relative, percentage based mathematical quantities. This process makes possible accurate comparison between facial details in pictures from various sources.

Developer of Comparative Relative Measurement (CRM) technology, an offshoot of the CRCM process. This method combines advanced image analytical processes with custom designed spread sheet modeling to convert linear dimensions of objects in an image into relative, percentage based mathematical quantities, making possible accurate comparison of sizes of items in images from various sources.

Extensive experience in analyzing and enhancing surveillance recordings, audio recordings and photographic materials.

Designed, owns and operates a state-of-the-art custom engineered computerized forensic multimedia laboratory facility for video, audio and photography analysis, enhancement and documentation.

Recognized Expert Witness in Forensic Media Technology by Washington State and Federal Courts.

Contributing Consultant/Expert in the field of media forensics for the University of Washington Law School, Innocence NW Project.

Professional Experience – Computer Science, Engineering

1959 - 1969 Various engineering assignments in instrumentation design, process automation and component reliability for the civilian space program and other applications. Performed component reliability research for tropical environmental component failure (Vietnam war). Received a medal for computer component reliability work on the 1969 lunar landing.

1969 – 1972 US NAVY POSEIDON submarine missile program. Specializing in radiation hardened missile guidance computer technology including radiation hardened component research for the on-board targeting computers of the orbiting platforms of the Polaris/Antelope/Poseidon missiles. Coordinated component reliability engineering activities between the US NAVY Special Projects Office in Washington D.C., the computer design team at Lockheed Missile and Space Co., in Sunnyvale, CA, the component suppliers in Arizona and California, the underground test facilities in New Mexico and at Stanford University in Palo Alto, CA.

Professional Experience – Media Production – Video Engineering

Over 25 years of experience in digital media technology, motion picture and video production, research and consulting.

1992 - State Appointed Industry Advisor for school districts for desktop video and desktop graphics system design and training. Designed and built in-school video broadcast facilities for elementary, middle and high schools.

Independent Producer, Writer, Director, Cameraman, Editor. Self employed independent writer/director/producer of over 300 productions, in motion picture, multimedia and video.

1978 – 1986 S T C Productions, Redmond WA. Owner and Executive Producer. Complete motion picture production studio with 4,800 sq. feet soundstage, a screening room and offices. STC film production rate reached 6 programs per month. In **1983** realizing the fast advance of video production STC located its first video facility in Bellevue, WA.

1986 – 1992 Executive Producer with complete creative, technical and financial responsibility for the development, management and production of malpractice risk management video seminars for medical professionals. Each yearly production was budgeted over \$175,000, employed about 40 creative and technical talents. The seminars were held in 14 major US cities and had yearly paid attendance of over 2400 medical professionals.

Worked with, or on, programs for nationally famous presenters Ken Blanchard, Anthony Robbins, Dr. Peter Jensen and Harold Taylor.

1994 – 1996 Producer of international programs, foremost being a National Geography style documentary on the persecution of three African tribes by the Sudanese government in the Blue Nile region of South Sudan.

1998 – Present Produced several corporate training and marketing programs and theatrical/ stage presentations. Created a series of interactive law enforcement firearms judgment training programs, presently in use by various law enforcement agencies nationwide and by the British NITOR anti-terrorist training organization. Acquired extensive knowledge of law enforcement procedures and service weaponry.

Articles Published

“The History, Background and Explanations of The Art of Photographic Relative Image Measurement and Comparative Evaluation Techniques” (08/14/08).

“Scientific Research Background of the Cranial Comparative Relative Measurement (CRCM) Process” (06/10/09).

Seminar Presentations

“Shortfalls and Technical Issues in Surveillance Recording” a 2 Hour Presentation given at the Washington Defender Association 2009 Defender Conference, April 24, 2009, Sun Mountain Resort, Winthrop, WA. Participants received 2 CLE credits for attendance.

Memberships and Awards

Participant in Innocence Project NW, University of Washington Law School, as forensic multimedia and computer science specialist.

Invitee member of the American Film Institute by Charlton Heston.

Listed in “Who’s Who in American Entertainment”.

Recipient of the prestigious John Muir Medical Film award.

Personal

Immigrated in the US in 1959 on a First Preference Technical Immigration Quota.

US citizen, naturalized in 1964.

DOD classification: Secret, inactive.

Married, 5 grown children. In excellent health, non-smoker, never used any drugs.

Multi lingual and familiar with foreign cultures. Comfortable and effective in multi-cultural environments.

Experienced offshore fishing boat skipper with proficient knowledge of fisheries, boat handling, electronic navigation and Northwest US coastal waters.

**Partial List of Forensic Media Analysis and Enhancement Cases
for Attorneys, Investigators, Law Enforcement, Corporate Clients, Associations and Individuals.**

By Thomas R. Sandor
EnVision Digital div. of S T C Productions
trsandor@aol.com

June 2011. Not in chronological order

CURRENT and RECENT CASES

Felon Possessing Fire Arm – Federal Court case. Extensive enhancement of police car dash-cam video and audio taken during arrest shows that the individual accused had no detectable gun on his person. Case pending. Client: Defense Attorney.

Assault with A Deadly Weapon – Thurston County Superior Court case. First trial ended in hung jury. Very extensive enhancement of surveillance video footage combined with photographic analysis of various pieces of evidence. Case pending. Client: Defense Attorney.

Theft in Sports Equipment Store– Snohomish County Superior Court case. Surveillance footage enhancement and facial detail analysis proved that the man was falsely accused. *Case dismissed by judge*. Client: Defense Attorney.

Alleged Assault on Police Officer – Thurston County Superior Court case. Video of incident was enhanced to and slow motion processed that proved that the person was falsely accused. *Case dismissed by judge*. Client: Defense Attorney.

Alleged Rape of 3 Year Old – Kitsap County Superior Court Case. Evidence offered on DVD disc had no audio content. Engineering tests conducted on the SAU recording system and forensic analysis of the DVD disc by EnVision proved the charge being based on hearsay evidence. *Case dismissed by judge*. Client: Defense Attorney.

Theft of Laptop Computer – Snohomish County Superior Court case. Extensive enhancement and time stamp reconstruction by EnVision proved that the man was falsely accused. *Case dismissed by judge*. Client: Defense Attorney.

Wrongful Death – Civil case in Maui County, Hawaii. Man arrested for drunkenness was dead for 27 hours in police lock-up before he was checked. During entire time, about 35 hours he was on surveillance camera but no one checked the monitor. Enhancement of surveillance recording with motion analysis by EnVision corroborated the coroner's finding of the time of the death. Case pending. Client: Plaintiff's Attorney.

Sexual Assault of a Child and Possession of Depictions of Minors In Explicit Sexual Activity – Accused is charged under Washington's Persistent Offender's Law. Case under Protective Order – Analysis of content of accused's computer's hard drives – forensic analysis of images. Using EnVision Maximum Document Security Processing to assure complete confidentiality. Case pending. Client: Defense Attorney.

Rape – Case under Protective Order – Surveillance video enhancement. Using EnVision Maximum Document Security Processing to assure complete confidentiality. Case pending. Client: Defense Attorney.

Home Invasion, Assault, Credit Card Fraud – Post-conviction case re-evaluation for the University of Washington Law School Innocence NW Clinic – Surveillance video enhancement, CRCM processing. Case closed. Client: UW Law School Innocence NW Project.

First Degree Murder – Sandwich Shop – Extensive surveillance video enhancement and crime scene reenactment with the use of Relative Comparative Measurement (RCM) technology, a subset of the CRCM process, to determine various physical dimensions of the scene and of the perpetrator. Guilty verdict by jury. Client: Defense Attorney.

Tax Fraud – U.S. Federal Case – Audio recording enhancement and detection of editing or alteration by sound signature analysis. Case pending. Client: Defense Attorneys.

Assault in Parking Garage – Civil Case, Atlanta, GA - Surveillance equipment engineering analysis and video enhancement to detect alteration of evidence. Case pending. Client: Plaintiff's Attorney.

Bank Robbery – Surveillance video enhancement and Cranial Relative Comparative Measurement (CRCM) analysis to disprove accused's presence at the crime scene. *Case dismissed by prosecutor upon CRCM presentation.* Client: Defense Attorneys.

Robbery – Convenience Store in Kennewick, WA - Surveillance video enhancement and Relative Comparative Measurement (RCM) analysis, a subset of the CRCM process, to prove wrong person was arrested for the crime. Case pending. Client: Defense Attorneys.

First Degree Murder – Chinese Restaurant - Surveillance video enhancement and Cranial Relative Comparative Measurement (CRCM) analysis to disprove accused presence at crime scene. Case closed. Client: Defense Attorneys.

Attempted Robbery – Extensive media enhancement. Using Cranial Relative Comparative Measurement (CRCM) analysis successfully proved innocence of accused. *Case dismissed by prosecutor upon CRCM presentation.* Client: Defense Attorney.

Assault and Robbery – Extensive enhancement of cell phone video to identify attacker and accomplice. Case closed. Client: Defense Attorney.

First Degree Murder – Bowling Alley Parking Lot - Surveillance video enhancement and Cranial Relative Comparative Measurement (CRCM) technique to identify accused or disprove presence at crime scene. *Case settled for reduced charge from 1st degree murder to manslaughter.* Client: Defense Attorneys.

First Degree Murder – Surveillance audio recording enhancement to detect unlawful search of premises by police. Case pending. Client: Defense Attorneys.

Construction Storage Lot Burglary – Cranial Relative Comparative Measurement (CRCM) technique proved that the individual shown on the surveillance recording is the person in custody for the crime. Client: Defense Attorneys.

Second Degree Murder – Extensive media enhancement. Using Cranial Relative Comparative Measurement (CRCM) technique developed by Thomas R. Sandor the innocence of the accused was proved. *Case dismissed by prosecutor upon CRCM presentation,* the man was released from jail after being incarcerated for a year. Client: Defense Attorneys.

Alleged Child Pornography – Washington State Case. Examination of computer content and allegedly downloaded pictures. Extensive image analysis. *Case dismissed* due to the evidence developed. Client: Defense Attorneys.

Child Pornography – U.S. Federal case. Examination of computer content and hundreds of downloaded photos in cooperation with FBI expert. Extensive image analysis. Accused found guilty. Client: CJA Administration, Federal Public Defenders.

False Arrest – Enhancement and analysis of police vehicle dashboard camera recording to prove false claim of a traffic infraction resulting in DUI arrest. Case closed. Client: Defense Attorney.

EARLIER CASES

Injury on Walmart Parking Lot – Selection and enhancement of Walmart surveillance camera recordings to identify vehicle involved. Civil Case. Client: Plaintiff's Attorney.

Robbery at a WAMU ATM – Bank's surveillance recording analysis to confirm or deny that the robbery occurred. Client: Public Defender's Office.

Deportation Case -- Converting foreign footage from BBC and combining with other video materials in support of deportation of terrorist suspect in federal custody – 2 programs. Suspect was deported to Saudi Arabia. Client: Immigration and Customs Enforcement of US Department of Homeland Security.

Horse Shooting - Enhancement of home video footage to analyze sound signature of shots to identify weapon and enhance image details of shooter in window. Perpetrator convicted. Client: King County Prosecutor.

Poisonous Pet Food Litigation – Review and analysis of court room recording to detect alleged alteration of audio content. Client: Plaintiff.

Police Brutality – Enhancement of in-store surveillance camera footage showing use of excessive force during unlawful arrest. Client: Public Defenders Office.

Submarine Sandwich Shop Burglary – Enhancement of surveillance video quadrant with extreme digital processing to show lack of identifying mark on hand of allegedly falsely convicted person. Client: Defense Attorney.

Accidental Death Investigation – Production and enhancement of video footage showing impossibility of worker being injured unless extremely careless. Client: major Railroad Company.

Arson On Commercial Property – Combining four surveillance camera recordings, including enhancement of quadrants to develop sequence of events to identify arsonist. Client: King County Arson Investigator.

Mail Theft - Enhancement and enlargement of details of undercover surveillance camera footage of mail theft in process for identification of criminal. Client: US Postal Inspection Service.

Assault in Car - Enhancement and enlargement of sections of Casino parking lot surveillance video to show accused had both hands on steering wheel during alleged assault. *Case dismissed*. Client: Defense Attorney.

Illegal Diversion of Streams Resulting in Severe Flooding of Farm Land – Compilation of video and photographic media showing several years of illegal activity by major residential developer and lack of King County enforcement. Client: Property Owners Association.

Several Other Projects – Analysis and enhancement of surveillance camera footage for car break-ins, burglaries and other crimes occurring in homes; automobile collision photographic evidence to prove fraudulent insurance claims and other smaller projects.

NOTE: “Case closed” means that EnVision Digital completed the required forensic work and is no longer working on that case.

IMPORTANT NOTICE: The information contained in this communication, including all attachments thereto are PRIVILEGED and CONFIDENTIAL. It is intended solely for the addressee and it's exempt from disclosure under applicable law.

FILED
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11 AUG 29 PM 4:15
STATE OF WASHINGTON
BY DEPUTY

WASHINGTON STATE COURT OF APPEALS
DIVISION TWO

In re Personal Restraint Petition of
MARGARET ELAINE BELKNAP,
Petitioner

Cause No. 42005-8-II

DECLARATION OF NEIL FOX

Neil Fox declares and certifies as follows:

1. I am a criminal defense attorney in Washington . I have been licensed by the Washington State Bar Association since 1985. My Washington State Bar number is 15277.

2. I have been practicing criminal defense since 1985. I worked as a staff attorney at the Washington Appellate Defender Association from 1985-1989, handling indigent appeals and Personal Restraint Petitions. From 1989-2002, I was an attorney and supervisor at the Seattle-King County Public Defender Association. In 2003, I became of counsel to the criminal defense firm Cohen & Iaria. In 2010, I founded The Law Office of Neil Fox PLLC. I have handled hundreds appeals and post-conviction petitions, as well as hundreds of cases at the trial level. In my post-conviction cases, I have regularly investigated and raised issues of ineffective assistance of counsel. I have given talks to other attorneys on the issue of investigation of criminal cases.

1 3. I have been asked by Ms. Belknap's attorney, Jennifer Kaplan, provide an expert
2 opinion on the steps a reasonably competent attorney must take to effectively represent a client
3 in a criminal matter. I am familiar with the facts of the case

4 4. To render my opinion, I have reviewed the following materials:

5 a) The police report written by Charles Gassett;

6 b) The Certification of Probable Cause in this case;

7 c) The Petitioner's briefing in this case filed in the superior court.

8 d) The enhanced and unenhanced videos of the arrest.

9 5. Based upon my review of these items, my understanding of the facts of this case
10 is that Ms. Belknap attended a protest that was ended by the police. During a mass arrest, she
11 was accused of attempting to kick Officer Jason Winner, and that Officer Charles Gassett
12 claimed to have grabbed Ms. Belknap in response, and that Gassett claimed that Ms. Belknap
13 kicked him twice, once in the thigh and once in the groin. I understand that Ms. Belknap was
14 charged with two counts of Assault in the Third Degree for these alleged events and was
15 convicted of kicking Mr. Gassett and acquitted of attempting to kick Mr. Winner.
16

17 6. It is further my understanding that trial counsel in this case had received a copy of
18 the police video alleged to have depicted assault conviction in discovery from the state. My
19 understanding is that trial counsel told Ms. Belknap that he could not see what happened in the
20 video and did not pursue the video any further.
21
22
23

1 7. It is my understanding that after Ms. Belknap's trial, Ms. Kaplan arranged to have
2 an expert review the video, and that the expert thereupon used conventionally accepted
3 techniques to enhance the video and that the enhanced video revealed that Ms. Belknap did not
4 kick Officer Gassett in the thigh and in the groin, as he claimed at her trial, and that the other
5 officer did not appear to be in the area.

6 8. It is my expert opinion that defense counsel cannot make informed decisions
7 about how to represent his or her client without conducting an adequate investigation. This
8 requirement of investigation, even if defense counsel believes his or her client is really guilty, is
9 well established. See National Legal Aid and Defender Association, *Performance Guidelines for*
10 *Defense Representation*, Guideline 4.1(a) ("Counsel has a duty to conduct an independent
11 investigation regardless of the accused's admissions or statements to the lawyer of facts
12 constituting guilt."); American Bar Association, *The Defense Function*, Standard 4-4.1 ("Defense
13 counsel should conduct a prompt investigation of the circumstances of the case and explore all
14 avenues leading to facts relevant to the merits of the case and the penalty in the event of
15 conviction. The investigation should include efforts to secure information in the possession of
16 the prosecution and law enforcement authorities. The duty to investigate exists regardless of the
17 accused's admissions or statements to defense counsel of facts constituting guilt or the accused's
18 stated desire to plead guilty."). While considerable discretion is given to lawyers to make
19 strategic decisions about what to investigate, ["w]hen defense counsel merely believes certain
20 testimony *might* not be helpful, no reasonable basis exists for deciding not to investigate."
21 *Duncan v. Ornoski*, 528 F.3d at 1234-35 (emphasis in original). Accordingly, no deference is
22 required to tactical decisions made by counsel where counsel fails to conduct appropriate
23

1 investigations prior to making the tactical decision. *Rios v. Rocha*, 299 F.3d 796, 805-11 (9th
2 Cir. 2002).

3 9. The duty to investigate includes the duty to consult experts, which is supported by
4 various restatements of professional standards, such as the National Legal Aid and Defender
5 Association, *Performance Guidelines for Defense Representation*, Guidelines 4.1(a)(7) &
6 7.5(d)(4). The duty to consult experts is also well-grounded in Sixth Amendment jurisprudence
7 in both state and federal court. *See, e.g., Duncan v. Ornoski*, 528 F.3d 1222 (9th Cir. 2008); *In re*
8 *Brett*, 142 Wn.2d 868, 16 P.3d 601 (2001).

9 10. It is my opinion that video evidence of an alleged crime is among the most
10 critical evidence available in a criminal case. Many jurors do not believe that video evidence lies.
11 From the Rodney King case to more mundane criminal matters, where the police or businesses
12 (such as banks or convenience stores) capture key evidence of a perpetrator's identity through
13 video evidence, my experience has been that video evidence is one of the most significant types
14 of evidence in criminal cases – either for the defense or for the prosecution. Video evidence
15 may contain details that a witness did not notice, does not recall, or does not tell the truth about.
16 I have seen criminal cases fall apart because video footage provided compelling evidence of a
17 defendant's innocence. I have also seen the prosecution of cases become much stronger because
18 of the presence of videographic evidence that clearly shows a defendant's guilt.

19 11. Although I have not had personal experience with the issue of "enhancement" of
20 video evidence, I have heard of such processes and understand that courts have allowed for the
21 admission of such evidence where the enhancement is done in a professionally accepted manner
22 that does not alter the accuracy, integrity and trustworthiness of the original image, but only
23

1 makes it easier to see. See e.g., *United States v. Seifert*, 351 F. Supp. 2d 926 (D. Minn. 2005),
2 aff'd 445 F.3d 1043 (2006); *People v. Armijo*, 179 P.3d 134 (Colo. App. 2007); *The Impact of*
3 *Video Evidence on Modern Policing* (International Association of Chiefs of Police, 2001) (found
4 at: http://www.cops.usdoj.gov/files/ric/Publications/video_evidence.pdf).

5 12. In the instant case, if I, as a defense attorney, had a video created by a police
6 agency of the actual event which led to the State to decide to charge my client, I would look at
7 this video very carefully. If the events were not clear in the video, I would contact an expert to
8 assist me to determine if there might not be some way to enhance the image, to make it more
9 clear. If the case was proceeding to trial, I would be concerned that the prosecution might be
10 consulting its own experts to enhance the video so I would want to do this myself so I would not
11 be surprised at trial.

12 13. I can think of no tactical reason why counsel would not have a video enhanced to be
13 able to clearly see the events depicted therein. If the video were enhanced and it was not helpful
14 to the defendant, it would have been protected under the work-product doctrine and would be
15 part of the attorney:client privilege and would not have to have been disclosed. Thus, there
16 would have been no risk that investigating the facts of the case would have been in any way
17 harmful to the defendant. On the other hand, if counsel had brought the video to an expert for
18 enhancement and the enhancement was successful in making the events clear, counsel could
19 demonstrate to the jury that the events, as alleged by the police, did not take place in the manner
20 in which they claimed.

14. In this case, as noted, it is my understanding that professional enhancement of the video of the demonstration would have shown that Ms. Belknap did not kick Officer Gassett, thereby (a) directly contradicting Officer Gassett's testimony and (b) directly supporting Ms. Belknap's defense that she did not kick the officer. I have not heard of any reason why counsel did not seek enhancement of the video and therefore I conclude that her attorney's performance fell below the standard of reasonable competence and that Ms. Belknap was prejudiced by this deficient performance.

I hereby declare under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

Dated this 29 day of August 2011, in Seattle, Washington.

Neil Fox, WSBA No. 15277